Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New Jersey	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	WC Docket No. 02-67
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New Jersey	)	

VERIZON'S SUPPLEMENTAL RESPONSE TO AT&T'S REPLY IN SUPPORT OF MOTION FOR EMERGENCY RELIEF

AT&T claims that Verizon "continues to market aggressively its long distance services" in New Jersey and that it has thus "gain[ed] a significant competitive advantage" over potential long-distance rivals. AT&T Reply at 5, 7. That claim is false, and it marks another chapter in AT&T's regrettable history of substituting rhetoric for substance in the section 271 process.

If Verizon had wished "to market aggressively its long distance services" in New Jersey, its long-distance affiliate would have run systematic, high-visibility advertisements in various media telling all New Jersey residents that it hoped soon to receive FCC authorization to sell them long-distance services. That did not happen, even though the affiliate would have been free to run such advertisements on its own behalf. *See* 47 U.S.C. § 272(g). Instead, what AT&T calls "aggressive marketing" consisted of inadvertent marketing miscues (1) that affected only a small percentage of New Jersey customers before Verizon discovered the mistake, (2) that were promptly corrected when Verizon notified the recipients that it does not (and cannot) provide long distance in New Jersey at this time, and (3) that did not lead, and could not have led, to the provision of long distance service to any customer. *See* Verizon June 14 Reply at 4.

This is not to say that Verizon made no mistakes: it did. But Verizon did not launch a long distance marketing "campaign" in New Jersey, much less an "aggressive" one, and its marketing mistakes could never have given Verizon a "competitive advantage." No company enjoys a competitive advantage when, to its embarrassment, it accidentally promotes services that it cannot provision; it merely alienates any consumer that might have tried to purchase them.

AT&T's most recent allegations are also misleading. Here are the facts, as described in more detail in Verizon's two June 17 *ex partes*:

- Verizon's websites consistently have made clear that Verizon does not provide long distance in New Jersey. This is true of Verizon's main website, the long distance company's website, and the webpages for Verizon's individual long distance products. Any visitor to the SmartTouch webpage about which AT&T complains would have been informed at least three times before placing an order that Verizon does not provide long distance service in New Jersey. A total of eight attempts were made to submit ordering information using the SmartTouch webpage, of which at least six were made by or at the request of either Verizon or AT&T employees for purposes of testing the site. Also, of all the long-distance packages listed on Verizon's website, only the webpage for SmartTouch (a little-used pre-paid plan) contained the glitch that generated an automatic confirmation. Any visitor (like the AT&T employee) who disregarded the explicit warnings that long distance service would not be provided in New Jersey and submitted the form would not have received long distance service in any event. Finally, after AT&T's filing, Verizon sent all users who submitted ordering information an email again telling them service would not be provided due to lack of authority in New Jersey.

- Verizon has not initiated any long distance telemarketing in New Jersey, and extensive procedures are in place to ensure that the telemarketing vendors who market local services do not offer long distance. The marketing script for the only authorized vendor that called AT&T employee Dilshad Khawaja does not mention "long distance service." On the contrary, that representative's marketing script includes the heading: "CANNOT SELL LONG DISTANCE - NOT VZ APPROVED." Although no tape recording of that call is available, a different recording of the same sales representative reveals that, during the same time period, she answered "no" several times to questions from a different caller about whether Verizon provides long-distance service in New Jersey.

- Nor, contrary to AT&T's claim, has Verizon initiated a marketing campaign in Virginia. The direct mail piece cited by AT&T relates to an incident that Verizon previously disclosed to the Commission. The mailings were inadvertently sent to approximately 2000 customers in the former GTE territories in Virginia. Those customers were incorrectly included in a marketing campaign directed at the former GTE service areas,

outside the states served by the former Bell Atlantic and, therefore, not subject to section 271 restrictions. Verizon has already sent a corrective letter to each of those customers.

In sum, AT&T's latest allegations add nothing to support its Motion.

ARGUMENT

As an initial matter, AT&T based its original motion entirely on the argument that, by mistakenly sending advertising to customers in New Jersey, Verizon should be deemed to have "provided" long distance prematurely under the *Qwest Teaming Order*. While AT&T repeats that claim in its reply, it still fails to address the fundamental differences between that case and this one. In this case, unlike that one, the Bell company in question did not consciously and intentionally undertake a marketing campaign, nor did any carrier actually provide any interLATA service making use of the Bell company's name. Indeed, in *Qwest*, there was no question that *someone* actually provided "interLATA services" – which the Act defines as "transmission" services across LATA boundaries (47 U.S.C. § 153(21), (43)) – and no question that the Bell company deliberately embarked on a marketing campaign on behalf of that carrier. Verizon, in contrast, has not provisioned such services itself, has not entered into a joint marketing agreement with another carrier that actually does provision them, has not deliberately marketed any long distance service, and has promptly corrected the materials that were sent by mistake. *See* Verizon June 14 Reply at 4-7. Moreover, in this case, unlike that one, the Bell company derived no benefit. Indeed, Verizon has been *dis*advantaged by the customer confusion and marketing black eye it inflicted on itself.[1]

---

[1] Moreover, to ensure that it does not benefit from any sales leads generated by the inadvertent mailings, Verizon will remove from its marketing lists any customer names that may have been captured by Verizon's sales representatives as a result of responses to those mailings so that they are not used to contact those customers once section 271 approval is granted.

In its reply, AT&T, for the first time, falls back on the claim that Verizon has violated, if not section 271(a), then the "joint marketing" restriction of section 272(g)(2). As an initial matter, it is by no means clear that a Bell company violates section 272(g)(2) when it (or a third party vendor) inadvertently exposes a small percentage of its customers to marketing materials not meant for them and then, on its own initiative, alerts this Commission of the problem and notifies the customers in question that it cannot provide the advertised services.

In any event, even if there were merit to AT&T's claim that Verizon has violated section 271(a) or 272(g)(2), the relief AT&T seeks – denial or delay of section 271 authorization – would still be inappropriate. Because AT&T claims that those supposed violations constitute an "independent" ground for denying the application, and because AT&T does *not* claim that its allegations here have any bearing on checklist compliance, AT&T's argument must be evaluated on the premise that Verizon has satisfied every item on the checklist. Nor does AT&T claim that section 271 authorization should be denied under section 271(d)(3)(B) on the theory that these marketing incidents cast doubt on whether "the requested authorization will be carried out in accordance with the requirements of section 272." Section 271(d)(3)(B) addresses only *post-authorization* compliance with section 272, which is not at issue here because the marketing in question plainly would be permissible after authorization.

Moreover, it would *disserve* the public interest standard of section 271(d)(3)(C) to deprive New Jersey consumers of new price-reducing competition in the long-distance market once Verizon has fully opened its local market to competition – as, by hypothesis, it has already done by complying with the checklist. *See* Verizon June 14 Reply at 8-10. AT&T's contrary position is particularly illogical where, as in this case, every alleged marketing violation occurred only after the filing of the section 271 application and thus (by hypothesis) only after the Bell

company had already relinquished any undue competitive advantage it might otherwise have enjoyed in the long distance market. That is not to say that the Commission lacks authority to order an appropriate remedy in a separate enforcement investigation if it ultimately finds a statutory violation. Verizon's point is that any such remedy should not come at the expense of the public's interest in greater long distance competition once local markets are open.[2]

Finally, AT&T cites no basis for disputing the Commission's "confidence that [Verizon's] local market . . . will remain open to competition" once Verizon receives authority to offer interLATA services in New Jersey. AT&T Reply at 12 (quoting *Ameritech Michigan 271 Order*, 12 FCC Rcd 20543 ¶ 397 (1997)). Verizon has now received section 271 authority in seven states, and the local markets in them remain fully open. In New York, for example, local competition exploded after Verizon's entry: competitors in New York served just over one million lines at the time of Verizon's application, and today they serve more than three million lines. *See* Verizon's Application (December 20, 2001) at Ex. 5. Similarly, in the first seven months since Verizon's entry in Massachusetts, CLECs added nearly 24,000 lines per month in that state. *Id.* at Ex. 6. And, in Pennsylvania, CLECs have added more than 28,000 lines per

---

[2] The Commission's recent audit of Verizon's section 272 compliance did not reveal, as AT&T erroneously asserts in passing, "widespread and flagrant violations." AT&T Reply at 3. As Verizon has explained, the audit showed instead that Verizon has a comprehensive and effective program for maintaining compliance with the applicable accounting and non-accounting safeguards. *See* Declaration of Sue Browning ¶ 32 (App. F, Tab 1). In fact, the audit did not identify any basis for concern about the independent operations of the local operating company and Long Distance Affiliates. *Id.*; *see also* Response of Verizon to Comments on Biennial Section 272 Report, WC Dkt. No. 96-150 (June 10, 2002). In any event, that audit provides no more basis for rejecting this section 271 application than for rejecting Verizon's other recent applications, which the Commission has granted despite similar claims by AT&T. *See* Memorandum Opinion and Order, *In the Matter of Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Vermont*, FCC No. 02-118, 2002 WL 575615 ¶ 60 n.226 (April 17, 2002); Memorandum Opinion and Order, *In the Matter of Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, FCC No. 02-187, at ¶ 56 n.255 (June 19, 2002).

month since the Pennsylvania PUC endorsed Verizon's section 271 application in June 2001. *Id.* at Ex. 7. Verizon's provisioning performance has also further improved since it received section 271 approval in these states. For example, in New York, Verizon installed 98.3% of the DSL loops on time in April 2002, compared to 93% at the time the New York Application was filed. And Verizon provisioned 98.9% of hot cuts on time in New York during April 2002, compared to 91% at the time of the New York filing. *See* Carrier-to-Carrier Performance Reports.

CONCLUSION

AT&T's Motion for Emergency Relief should be denied and Verizon's Application to provide interLATA service originating in New Jersey should be granted.

Respectfully submitted,

Michael Glover /jn

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
Donna M. Epps
Joseph DiBella
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3860

Evan T. Leo
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

Jonathan E. Nuechterlein
Catherine K. Ronis
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037
(202) 663-6380

June 20, 2002